THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26101 of 1997

Dated: 05.4.2007

Between:

Khaja Miya

… Petitioner

AND

A.P.State Road Transport Corporation,
Rep by Managing Director,
Musheerabad Depot, Hyderabad-20.

And others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26101 of 1998

ORDER:

This writ petition is filed for writ of mandamus to declare the order passed by the third respondent in proceedings No.PA/20 (64)/95-SMO:SRD dated 8.8.1995 to the extent the petitioner's past service is denied and the order passed by the same authority on 26.3.1997 whereby he rejected the petitioner's application for review as illegal, unjust and contrary to the regulations of the respondent-Corporation.

The petitioner is a driver in A.P.S.R.T.C. He was served with a charge sheet comprising two charges, which are extracted as under:

> " Charge No.1: For having absented to your duties unauthorisedly from 20.8.1994 to 22.8.1994 and 27.8.1994 to 28.8.1994, without obtaining prior sanction of leave from the competent authority, which constitutes misconduct under Reg.28 (xxvii) of APSRTC Employees (Conduct) Reg. 1963.
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> Charge No.2: For having not available for your duties by 7 days absent and 7 days leave, caused dislocation of service and much inconvenience to the traveling public, besides huge loss of revenue to the Corporation, which constitutes misconduct under Regulation 28(ixb) & (xxvii) of the APSRTC Employees (Conduct) Reg.1963."

After holding an enquiry in which the petitioner was found guilty of both the charges, respondent No.4 vide his order dated 24.6.1995 removed the petitioner from service with immediate effect. Questioning the said order, the petitioner filed an appeal before respondent No.2.

Respondent No.2 partly allowed the appeal by taking a lenient view and directing appointment of petitioner as driver afresh, thereby the petitioner's past service and monetary benefits are denied.

Heard Sri A.K.Jayaprakash Rao, learned counsel for the petitioner. There is no representation for the respondents though the writ petition was listed on 21.3.2007 and again on today.

Sri A.K.Jayaprakash Rao submitted that while the finding that the petitioner was unauthorisedly absent for a period of 7 days in all may not call for interference by this court while exercising the power of judicial review, the punishment imposed on the petitioner of denying his entire past service is too harsh and disproportionate to the gravity of misconduct. I find considerable force in the submission of the learned counsel. Even if we take the charges on their face value and the findings rendered by the enquiry officer and as accepted by the disciplinary authority as they are, the petitioner's misconduct is proved to the extent of unauthorisedly absenting himself from duty for a period of 5 days in all, i.e., from 20.8.1994 to 22.8.1994 and 27.8.1994 to 28.8.1994 under charge No.1 and his further unauthorized absence for 7 days under charge No.2. Undisputedly it would have caused some dislocation in the work of the Corporation. But this is not a case where the petitioner is found guilty of financial embezzlement or similar other misconduct warranting a very severe punishment of denying the petitioner the benefit of entire past service of almost 18 years (petitioner has joined the Corporation as Driver on 29.7.1977). It is no doubt held by a catena of judgments of the Supreme Court that the primary tribunal (the departmental authorities) has the discretion to impose punishment and that the courts/tribunals would not ordinarily interfere with such a discretion exercised unless the penalty imposed on an employee is so disproportionate as to disturb the judicial

conscience of the courts/tribunals. I have no doubt in my mind that the case on hand is one in which the penalty of denying the petitioner the entire past service of more than 18 years certainly shocks the judicial conscience.

I am therefore inclined to allow the writ petition with a direction to the respondents to give the petitioner the benefit of past service without monetary benefits during the period when the petitioner was out of employment.

The writ petition is allowed subject to the modification as indicated above.

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C.V.NAGARJUNA REDDY,J

Dt :05.4.2007
Mdaa.